IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 168 of 1992

For Approval and Signature:

Hon'ble MR.JUSTICE D.H.WAGHELA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

1 to 5 No

AKBARBHAI NOORBHAI GULIWALA

Versus

GUJ STATE CO OP BANK LTD

Appearance:

PARTY-IN-PERSON for Petitioner
MR TUSHAR MEHTA for Respondent No. 1
MR ASHOK R SHAH for Respondent No. 5
PMR AJ DESAI APP for Respondent No. 9

CORAM : MR.JUSTICE D.H.WAGHELA

Date of decision: 11/08/2000

C.A.V. JUDGEMENT

This revision application seeks to challenge the order of the learned Metropolitan Magistrate, Ahmedabad dismissing the complaint of the applicant. While issuing Rule in respect of opponents Nos.5 to 8 in this application, it is rejected in respect of opponents Nos.1 to 5. While the applicant has himself presented his case before this Court, none has remained present on behalf of the opponents.

2. The applicant lodged a criminal complaint under Section 409 read with Section 34 of the Indian Penal Code which was registered as Inquiry Case No.314 of 1991. According to the applicant/complainant, in the year 1978-79, a sum of Rs.10,93,889.95 was levied as excise duty by an order which was challenged by the applicant in this Court. According to the complaint, the amount was ordered to be refunded by this Court, but such order was challenged by the Excise Department in the Hon'ble Supreme Court. Pursuant to the order of the Hon'ble Supreme Court, the applicant was required to furnish a bank guarantee to the Registrar and, accordingly, the opponents Nos.1 to 4 had provided bank guarantee for the aforesaid amount for the period ending on 31.12.1985. The opponents Nos.1 to 4 had provided the bank guarantee on the strength of a counter-guarantee furnished by the opponents Nos.5 to 8 with whom the complainant had a bank account. And for the purpose of the bank guarantee, the complainant had had to deposit a sum of Rs.11 lakhs as a fixed deposit. The period of the bank guarantee was subsequently extended upto 31.12.1988 pending the litigation in the Hon'ble Supreme Court. It is alleged by the complainant that when the matter was decided by the Hon'ble Supreme Court, the contract of bank guarantee was subsisting and yet the amount was not paid by the bankers whereby a criminal breach of trust was committed. Subsequently, the complainant's firm had to pay the amount under the threat of proceedings for contempt even though the judgment of the Hon'ble Supreme Court was rendered in July 1988 during the subsistence of the bank guarantee.

3. Considering the contentions of the complainant and the replies filed by some of the opponents, the learned Judge of the trial Court found that the case involved the alleged breach of contractual obligation of a civil nature and no criminal offence was disclosed. Accordingly, the complaint was dismissed under Section 203 of the Cr.P.C.

4. Respondents Nos.5 to 8 have, in their reply in this proceeding, submitted that the complaint was rightly

dismissed as no criminal offence was disclosed and the present revision application without applying to the Sessions Judge is not maintainable. It is also stated in the reply that there is no illegality in the proceedings and passing of the order and no error or defect or any miscarriage of justice can also be found.

5. During the course of arguments, the applicant has submitted that the impugned order is made without considering the material on record and without affording proper opportunity of being heard. He has also submitted an affidavit to, inter alia, state that he had sent a letter dated 23.3.1990 to the opponents Nos. 5 to 8 to return the sum of Rs.11 lakhs deposited with them but neither the letter was replied nor the deposit returned to him.

6. The petitioner has, in support of his case, relied upon the judgment of this Court in BHASKERBHAI M. SHAH v. SHASHIKANTBHAI HIMMATLAL SHAH [1992 (1) GLH 642] to submit that intention of the opponent should be gathered from the facts on the record and complaint should not be dismissed only on the ground that the dispute was of a civil nature.

7. It is clear that the applicant is seeking to mix several of his grievances against his bankers and the original complaint about non-payment by the bankers in terms of the bank guarantee is now sought to be confused with the grievance of not receiving back the amount deposited by him about which there is not a whisper in the complaint. The applicant was unable to reply to the specific query as to when he was compelled to make the payment pursuant to the order of the Hon'ble Supreme Court and whether at that time the bank guarantee was subsisting. Therefore, it appears that the bank guarantee was not invoked and it stood expired when the applicant was required to make payment. In absence of any material or assistance from the applicant, it has to be inferred that the bank guarantee had expired without being invoked and the applicant was required to make payment when the bank guarantee had already expired. It cannot be presumed in favour of the applicant that immediately after the order of the Hon'ble Supreme Court, the bank guarantee must have been invoked and might not have been honoured by the bankers.

8. In this view of the matter, none of the grounds of this application stands substantiated to warrant any interference with the impugned order. Hence, the application is rejected. Rule is discharged with no

order as to costs.

Sd/-
(KMG Thilake)
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